Exhibit 7

Exhibit 7

A-29 Production Well Data From WRMS Database

well_type	owner	station_name	station_category	well_use	sample_date	lab	paramabbr	analytical	result_txt	rdl	units	data_acces
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	10/12/1995	ORANGE COUNTY WATER DISTRICT	MTBE	502.2	3.7	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	03/15/1996	ORANGE COUNTY WATER DISTRICT	MTBE	502.2	ND	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	03/27/1996	ORANGE COUNTY WATER DISTRICT	MTBE	502.2	1.0	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	03/29/1996	ORANGE COUNTY WATER DISTRICT	MTBE	502.2	1.2	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	05/08/1996	ORANGE COUNTY WATER DISTRICT	MTBE	502.2	ND	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	09/05/1996	ORANGE COUNTY WATER DISTRICT	MTBE	502.2	7.3	1.000	ug/L	INTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	09/05/1996	ORANGE COUNTY WATER DISTRICT	MTBE	502.2	6.6	1.000	ug/L	INTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	09/12/1996	ORANGE COUNTY WATER DISTRICT	MTBE	502.2	5.2	1.000	ug/L	INTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	09/12/1996	ORANGE COUNTY WATER DISTRICT	MTBE	502.2	5.5	1.000	ug/L	INTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	09/12/1996	ORANGE COUNTY WATER DISTRICT	MTBE	502.2	7.3	1.000	ug/L	INTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	09/12/1996	ORANGE COUNTY WATER DISTRICT	MTBE	502.2	5.6	1.000	ug/L	INTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	09/12/1996	ORANGE COUNTY WATER DISTRICT	MTBE	502.2	ND	1.000	ug/L	INTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	09/12/1996	ORANGE COUNTY WATER DISTRICT	MTBE	502.2	4.2	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	09/12/1996	ORANGE COUNTY WATER DISTRICT	MTBE	502.2	5.9	1.000	ug/L	INTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	09/12/1996	ORANGE COUNTY WATER DISTRICT	MTBE	502.2	4.8	1.000	ug/L	INTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	09/12/1996	ORANGE COUNTY WATER DISTRICT	MTBE	502.2	4.5	1.000	ug/L	INTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	09/12/1996	ORANGE COUNTY WATER DISTRICT	MTBE	502.2	6.9	1.000	ug/L	INTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	09/12/1996	ORANGE COUNTY WATER DISTRICT	MTBE	502.2	4.6	1.000	ug/L	INTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	09/12/1996	ORANGE COUNTY WATER DISTRICT	MTBE	502.2	7.6	1.000	ug/L	INTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	11/14/1996	ORANGE COUNTY WATER DISTRICT	MTBE	502.2	3.7	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	03/06/1997	ORANGE COUNTY WATER DISTRICT	MTBE	502.2	1.2	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	05/16/1997	ORANGE COUNTY WATER DISTRICT	MTBE	502.2	3.6	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	08/20/1997	ORANGE COUNTY WATER DISTRICT	MTBE	502.2	4.3	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	11/19/1997	ORANGE COUNTY WATER DISTRICT	MTBE	502.2	ND	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	03/19/1998	ORANGE COUNTY WATER DISTRICT	MTBE	502.2	ND	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	08/19/1998	ORANGE COUNTY WATER DISTRICT	MTBE	502.2	ND	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	10/02/1998	ORANGE COUNTY WATER DISTRICT	MTBE	502.2	ND	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	03/23/1999	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	1.000	ug/L	INTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	03/23/1999	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	06/17/1999	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	1.000	ug/L	INTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	07/13/1999	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	07/14/1999	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	09/01/1999	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	11/09/1999	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	03/03/2000	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	03/28/2000	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	1.000	ug/L	INTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	05/15/2000	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	07/25/2000	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	11/07/2000	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	03/13/2001	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	04/25/2001	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	05/15/2001	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	07/19/2001	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	10/22/2001	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	01/21/2002	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	04/23/2002	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	06/17/2002	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	07/31/2002	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	10/30/2002	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	11/26/2002	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	03/25/2003	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	04/14/2003	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	04/30/2003	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	06/09/2003	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	07/08/2003	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	08/18/2003	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	10/28/2003	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	01/15/2004	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	04/06/2004	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	07/15/2004	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	1.000	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	08/16/2005	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	0.200	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	08/29/2005	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	0.200	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	10/04/2005	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	0.200	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	12/14/2005	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	0.200	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	03/21/2006	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	0.200	ug/L	EXTERNAL
PRODUCTION	ANAHEIM	A-29/1	Inactive Production Well	LARGE SYSTEM	04/04/2006	ORANGE COUNTY WATER DISTRICT	MTBE	524.2	ND	0.200	ug/L	EXTERNAL

Exhibit 8

NY

Orange County Water District

Organic Laboratory

MTBE Hits

07-May-99

SampleID	Lab#	Collect Date	Analysis Date	Result	Title 22 Well
A-27/1	97030054-02	03/06/97	03/09/97	0.82 ug/L	Yes
A-27/1	97040022-02	04/01/97	04/04/97	0.55 ug/L	Yes
A-27/1	98020185-02	02/09/98	02/12/98	0.69 ug/L	Yes
A-27/1	98020314-02	02/18/98	02/23/98	0.66 ug/L	Yes
A-27/1	99020224-02	02/09/99	02/11/99	0.68 ug/L	Yes
A-27/1	99020498-02	02/24/99	02/26/99	0.55 ug/L	Yes
A-28/1	99030345-02	03/16/99	03/19/99	0.65 ug/L	Yes
A-29/1	97030053-02	03/06/97	03/09/97	1.22 ug/L	Yes
A-29/1	97050548-02	05/16/97	05/21/97	3.58 ug/L	Yes
A-29/1	97080706-02	08/20/97	08/23/97	4.25 ug/L	Yes
A-33/1	97080128-02	08/05/97	08/07/97	0.51 ug/L	Yes
A-34/1	97050216-02	05/07/97	05/09/97	0.99 ug/L	Yes
A-34/1	97080129-02	08/05/97	08/07/97	0.52 ug/L	Yes
ABS-1/1/WB1/MP3	97060449-03	06/13/97	06/18/97	0.92 ug/L	No
AM-11/1	97080969-02	08/28/97	09/04/97	0.58 ug/L	No
AM-15/1	98080724-02	08/21/98	08/23/98	1.37 ug/L	No
AM-19/1	98020280-02	02/13/98	02/19/98	0.92 ug/L	No
AM-19A/1	99020548-02	02/25/99	02/26/99	0.59 ug/L	No
AM-2/1	97100240-02	10/07/97	10/09/97	2.11 ug/L	No
AM-2/1	98100289-02	10/10/98	10/13/98	1.39 ug/L	No
AM-2/1	99030162-02	03/06/99	03/18/99	2.78 ug/L	No
AM-20/1	97010098-02	01/11/97	01/21/97	0.75 ug/L	No
AM-20/1	97010186-02	01/25/97	02/04/97	0.75 ug/L	No
AM-20/1	97090924-02	09/28/97	10/02/97	1.77 ug/L	No
AM-20/1	97120420-02	12/13/97	12/18/97	2.37 ug/L	No

CONFIDENTIAL

SampleID	Lab#	Collect Date	Analysis Date	Result	Title 22 Well
MISC	97010154-01	01/22/97	01/28/97	0.59 ug/L	No
MISC	97020091-01	02/12/97	02/15/97	0.81 ug/L	No
MISC	97050706-02	05/21/97	05/22/97	1.54 ug/L	No
MISC	97080662-02	08/19/97	08/19/97	3.00 ug/L	No
MISC	97080703-02	08/20/97	08/20/97	3.90 ug/L	No
MISC	97080750-02	08/21/97	08/21/97	1.30 ug/L	No
MISC	98060313-01	06/11/98	06/11/98	0.60 ug/L	No
MISC	98060674-01	06/23/98	06/25/98	2.72 ug/L	No
MISC	99030628-01	03/24/99	03/31/99	19.24 ug/L	No
MISC	99030629-01	03/24/99	03/31/99	18.86 ug/L	No
MISC	99030630-01	03/24/99	03/31/99	21.40 ug/L	No
MISC	99030640-01	03/24/99	03/31/99	1.02 ug/L	No
MISC	99030641-01	03/24/99	04/01/99	1.24 ug/L	No
MISC	99030642-01	03/24/99	04/01/99	1.13 ug/L	No
MISC	99030643-01	03/24/99	04/01/99	1.24 ug/L	No
MISC	99030644-01	03/24/99	04/01/99	13.05 ug/L	No
MISC	99030645-01	03/24/99	04/01/99	15.72 ug/L	No
MISC	99030646-01	03/24/99	04/01/99	14.44 ug/L	No
MOBL-MW8AU/1	98010537-02	01/26/98	02/06/98	0.81 ug/L	No
O-24/1	99030188-07	03/09/99	03/11/99	0.52 ug/L	Yes
OC-59	97050121-02	05/05/97	05/08/97	1.77 ug/L	No
OC-59	97050523-02	05/15/97	05/20/97	2.59 ug/L	No
OC-59	97070279-02	07/11/97	07/14/97	3.10 ug/L	No
OC-59	97070724-02	07/28/97	07/30/97	1.70 ug/L	No
OC-59	97080171-02	08/05/97	08/08/97	2.86 ug/L	No
OC-59	97090607-03	09/17/97	09/23/97	1.58 ug/L	No
OC-59	97100136-02	10/03/97	10/08/97	1.15 ug/L	No
OCWD-M10/2	99020025-02	02/01/99	02/02/99	0.61 ug/L	No

Exhibit 9

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December 16, 2005

BY ELECTRONIC MAIL and HAND DELIVERY

The Honorable Shira A. Scheindlin
United States District Judge
Southern District of New York
Daniel Patrick Moynihan Courthouse
500 Pearl Street, Room 1620
New York, NY 10007-1312

Re: In re MTBE Litigation, MDL 1358 (Scheindlin, J.)
Orange County Water District's Response to Defendants' CMO # 15 Submission

Judge Scheindlin,

The dispositive motion schedule established by the Court in CMO # 15 is imminently reasonable. Defendants have known since the beginning of this litigation precisely what they will say in the motions, as demonstrated in the "summary of motions" submitted in response to CMO # 15. Dispositive motions by their nature involve primarily legal issues, and defendants' "summary" confirms that this is true (with one exception) for the motions defendants intend to file against the Orange County Water District (the District).

For more than a year, defendants have delayed filing these motions by claiming that they need to conduct additional discovery. During this time the District has produced more than one hundred and fifty thousand pages of documents in response to defendants' discovery requests. Defendants' claim that they need still more time to conduct discovery is almost infinitely flexible. At some point the defendants have to present their arguments. Defendants have had more than a year. As the Court recognized in CMO # 15, that time has arrived.

The exception to this is the defendants' "threatened well" motion. This motion is actually not a dispositive motion at all, but rather an attempt to limit the District's damages claim. Damages discovery has not yet occurred. Defendants have only recently agreed to provide the information that Special Master Warner ordered them to produce in PTO # 9 so that the District

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can conduct an assessment of the threat posed to wells by MTBE releases from gas stations within the District. Accordingly, the District joins in defendants' suggestion that it would be premature to schedule this motion at this time.

Before responding to the specifics of defendants' objections to the Court's schedule, the District notes that the defendants "summary of motions" improperly equates the District's claims in this case with the much more attenuated and abstract class-action claims addressed by the Court in *In Re Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation*, 175 F.Supp.2d 593 (S.D. N.Y. 2001) (hereinafter *In Re MTBE I*).

As this Court noted in its June 22, 2005, Opinion and Order denying defendants' 12(b)(6) motion in the current case:

> The Water Agency Plaintiffs have standing to sue in their own right because they allege injury-in-fact that a favorable judgement would be likely to redress. Plaintiffs allege that defendants' conduct in manufacturing and distributing MTBE-containing gasoline without warning of its adverse environmental and health effects caused the contamination of the underground water supply in their respective service areas. This alleged behavior caused a concrete and particularized injury to plaintiffs because they are statutorily mandate to assure that the lands within the districts have suitable water supplies. Any conduct that interferes with plaintiffs' ability to do so, or causes plaintiffs to expend resources to investigate and /or remediate contamination, results in cognizable harm. Furthermore, a favorable judgement would be likely to redress plaintiffs' injury by enjoining defendants from causing more water contamination and/or ordering them to pay the costs of remediation.") of and right to prosecute public nuisance claims.

Opinion at 11-12 (emphasis added).[1] In fact, as the Court recognized later in the same opinion, the District's statutory powers include the power to prosecute "public nuisance" actions. See Opinion at 15-19.

Defendants' stubborn and narrow focus on "wells" ignores the nature of the District's claims and statutory powers. The District reviewed its statutory authority at some length in

[1] Although this section of the opinion addressed an argument directed only at water agency plaintiffs other than the District, it applies equally to the District.

opposing defendants' Rule 12(b)(6) "representational" standing motion, and respectfully refers the Court to that opposition for a more complete exposition of the District's claims and powers. We emphasize here, however, that the District does not itself operate domestic wells. Rather, the District is charged with protecting all groundwater within the District's territory. The District's powers include the power (and obligation) to: "assume the costs and expenses of any and all actions . . . to prevent interference with water . . . or diminution of the quantity or pollution or contamination of the water supply of the district . . . ." Water Code, Appendix 40-2(9).

One of the ways in which the District may act to protect groundwater (in addition to other remediation methods) is by installing treatment systems on existing wells owned by water users within the District that have become contaminated with MTBE. The Act itself specifically envisions use by the District of existing water user wells to remove and remediate pollution in groundwater. Appendix 40–2(6)(l) provides that the District may: "Fix the terms and conditions of any contract under which the owner or operator of a water-producing facility within the district may agree to increase the production of groundwater . . . for the purpose of removing contaminants or pollutants from the groundwater basin."

The District's powers to remediate contamination, and to do so by itself or in cooperation with others, is set forth in some detail in Water Code Appendix 40-8. The Orange County Water District Act also imposes liability for the costs of remediation on any "person causing or threatening to cause . . . contamination or pollution . . . ." Water Code, Appendix 40-8(c). In any action by the District to recover investigation and remediation costs, the Act creates a presumption that the costs were both "necessary" and "reasonable." *Id.*

With this background, the District addresses defendants' "summary of motions."

II. Contamination Below State MCL Motion

Defendants do not claim that they need additional discovery in order to bring this motion. Rather, they state that they "cannot determine whether a separate motion addressing claims for impacts to wells at levels below the state MCL will be pursued or not" because "[t]he District has not . . . stated whether it is claiming damages for these alleged MTBE levels [below MCL] in the wells, or what injuries might result from such MTBE levels."

The District's claims are not ambiguous. The argument that the District cannot claim damages when wells within the District's service area are contaminated at levels below the MCL is a purely legal argument, and nothing prevents defendants from presenting the argument now in a dispositive motion, so that the Court can resolve the issue.

III. "Justiciability" Motions.

Based on defendants' "summary of motions," defendants apparently wish to re-hash in these motions the same arguments rejected by the Court when it denied defendants' Rule 12(b)(6) motions to dismiss. As described in defendants' summary, these motions are based upon the assertion that the District "has not identified any injury or damage to its own property" and therefore lacks "standing" or the ability to prosecute its claims.

The defendants were able to present these arguments to the Court in their Rule 12(b)(6) motions, and nothing prevents the defendants from presenting the arguments again on January 13, 2006. Defendants argue that they need discovery which "overlaps with some of the discovery needed for Defendants' primary jurisdiction motion," and the "[d]efendants are considering third party discovery relating to claims allegedly assigned to OCWD . . . ."

As the Court noted in its June 22, 2005, Opinion and Order, the District is asserting claims only on behalf of itself. One well owner has assigned its claim to the District, but when the District asserts assigned claims, it does so on its own behalf. Whether the District's claims are legally cognizable is strictly a matter of law, and there is no reason for defendants to delay further any motions arguing that the District's claims are not legally cognizable.

IV. "Statute of Limitations" Motion.

No further discovery is necessary for defendants to file this motion. If defendants file the motion and lose, they will still have the opportunity to argue the statute of limitations at trial, after discovery, so there is no prejudice to defendants from filing this as a "dispositive" motion now. Additionally, this is not the first time that defendants' have argued that they need additional discovery in order to file this motion. Unfortunately for defendants, the argument gets weaker, not stronger, with repetition.

At the Conference on June 9, 2005, the Court directed plaintiffs in the focus cases to prepare a "first and last detect" chart that would tell defendants the first and last times that MTBE was detected in wells so that defendants could tee up a statute of limitations motion. See Transcript of June 9, 2005, status conference, at 28 - 29 (" THE COURT: Frankly, [the chart] moves us way further along on a statute of limitation motions. Sure, [defendants] want experts and sure [defendants] want test results but frankly that doesn't sound like it is terribly important for the statute of limitations motions. They just need dates and locations. Let's get this motion made and decided.").

When defendants protested that they needed additional discovery, the Court stated: " No, don't do that. Let's put interrogatories aside. This is a fairly straightforward motion. It has to do with the dates and the location. You will have dates, locations in my simple list. Now, you want other things for other reasons, but for the simple purpose of a statute of limitations motions, why can't you build a briefing schedule that starts with next Thursday when you will have this list. It is statute of limitations. That is it."

When defendants continued protesting that they wanted to take depositions, that Court noted: "[Plaintiffs have another theory, too. They are saying it a continu[ing] tort and the last hit is as important as the first. You need to respond to that argument. If they are right on that, not much more matters." After further protests, the Court predicted what has now come to pass in defendants' "summary of motions." "Listening to you, I could see this motion will not be made for another year or two or three. We cannot do it that way."

Plaintiffs provided defendants with the charts ordered by the Court within a week of the status conference. Defendants did not schedule depositions or "build a briefing schedule." They simply ignored the Court's directive. Defendants were fully capable of filing this motion within a week of receiving plaintiffs' charts, and there is simply no reason that this motion cannot be filed January 13, 2006, as directed by the Court.

V. "Threatened Well" Motion

Defendants have delayed filing their long-promised dispositive motion with respect to "threatened" wells for more than a year, arguing that the District must identify "threatened" wells before defendants can file their motions.[2] As plaintiffs have repeatedly noted, defendants used the term "threatened wells" as a stalking horse for conducting damages discovery, before defendants provide basic damages discovery themselves, and before the District's damages experts had an opportunity to prepare or submit reports. Defendants even refused to provide information that Special Master Warner, in PTO # 9, determined was needed by the District in

[2] As we explain below, the District uses the word "pretext" because the "standing" that defendants want to challenge when "threatened wells" are identified is determined based upon injury to the District, not injury to individual wells. Defendants have refused repeated requests from the District to describe with greater particularity why "threatened well" information is necessary to a "standing" motion.

order to comply with defendants' request to identify threatened wells.[3]

Defendants' "summary" confirms that the "threatened well" motion they intend to file has nothing to do with "justiciability" or "standing." Defendants' own summary now discusses "justiciability" motions as separate and distinct from their "threatened wells" motion. The District has never claimed that defendants do not have the right to test the District's damages. Rather, the District's consistent position has been that the District must be allowed to conduct discovery relevant to damages, and be allowed the time to develop expert reports, before motions challenging the District's damages may be brought.

After more than a year of delay, the defendants have finally agreed to produce the information that PTO # 9 directed them to produce. Once the District has received that information and had an opportunity to analyze the information, a timeline for addressing the "threatened well" should be established. In short, the District agrees with defendants that it is premature to establish a briefing schedule for this issue.

Finally, the District emphasizes that the "threatened well" issue, in addition to being used as a stalking horse by defendants, is a red herring. As explained above, the District's statutory charge is to protect the groundwater within its service area, and to address and remediate contamination that threatens that groundwater. Although threats to wells evidence the District's damages, as the Court's opinion of June 9, 2005, recognizes, the District is not seeking to assert claims on behalf of well owners. One well owner within the District has assigned a well claim to the District for a well that has been contaminated above the MCL, but the bulk of the District's claims are as described in the Court's June 22, 2005, Opinion and Order denying defendants' 12(b)(6) motion, as set forth above.

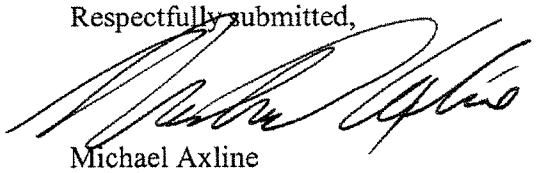
Conclusion

For the above reasons, the District respectfully requests that the Court reject (with one exception) the defendants' suggestion that the briefing schedule established in CMO # 15 be

[3] Defendants' mantra that they provided site remediation files on New Year's eve in 2004 completely ignores the fact that Special Master Warner subsequently found, in PTO # 9, that these site remediation files did not provide all of the information necessary to identify threatened wells, and ordered defendants to produce additional information necessary to identifying "threatened" wells.

altered. The exception is the defendants' anticipated "threatened well" motion, which the District agrees should not be scheduled at this time.

Respectfully submitted,



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